The Straights

A controversial trial tests the limits of dissent

by WILLIAM BARRY FURLONG

On the wall behind him is a portrait of Blackstone. On the bench in front of him is the *Handbook of Illinois Evidence*. But the case being tried in Federal Judge Julius Hoffman's courtroom in Chicago belongs to neither tradition nor tort. It belongs more to a Marx Brothers comedy as scripted by Salvador Dali.

The trial is of "the Chicago 8"—eight radicals of various mien and means who were central to what defendant Abbie Hoffman likes to describe as "five days of energy-exchange" during the Democratic National Convention in Chicago last year. They have been indicted on charges of violating certain provisions of the Civil Rights Act of 1968. Those provisions, which seek to penalize persons who cross state lines in order to provoke disorders, became part of the civil rights bill as a compromise to insure its passage. They were tacked on by Senator Strom Thurmond, and the "agitators" most often referred to in the attendant debate were Stokely Carmichael and H. Rap Brown.

Dr. Benjamin Spock and William Sloane Coffin, principals in the last prominent dissent trial, were brought into court under a 1948 law dealing with draft resistance. The Chicago 8 are the first persons ever indicted under what many people call the "Rap Brown law," and the more conspicuous of the defendants have reacted to the precedent-setting experience by trying to turn it into a spectacle. "Nevertheless," says Jay A. Miller, executive director of the Illinois division of the American Civil Liberties Union, "this is probably the most important political trial in the history of the United States." It could bring into focus such matters as freedom of speech, freedom of assembly, freedom to travel, and protection against unreasonable search and seizure.

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Facing off in the Chicago trial are two men named Hoffman. Judge Julius Hoffman, 74 (above), tartly denied pretrial motions by the defense, including one that he disqualify himself for his "personal hostility" to the defendants. Yippie leader Abbie Hoffman, 31, no relation to the Judge, could—like his seven fellow defendants—receive 10 years in jail and a $20,000 fine if found guilty. At right he addresses a noisy pretrial rally.

vs. the Chicago 8

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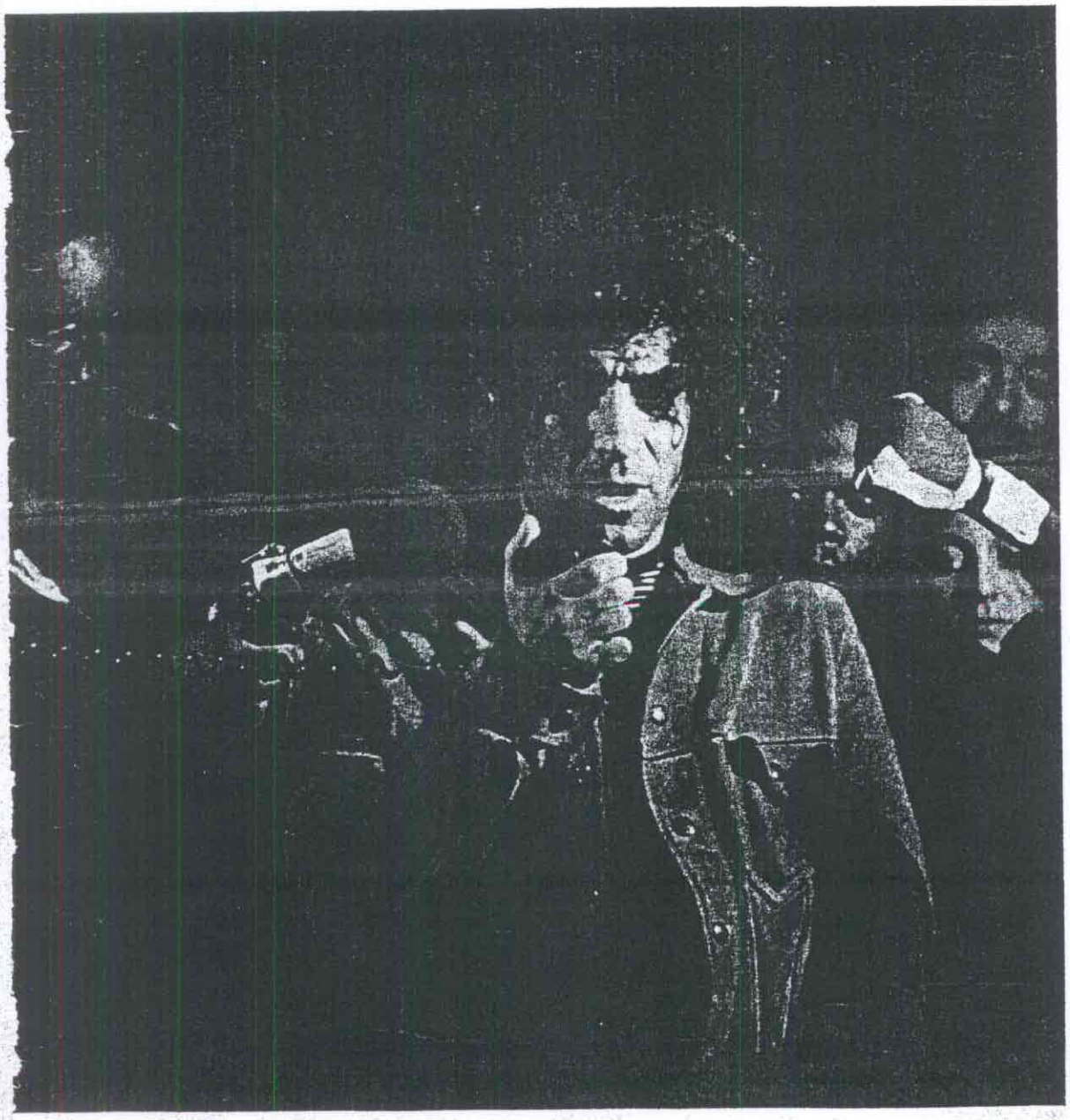

The defense won one motion from the judge

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In a sense, it seems less a trial than an act of vengeance—part of an appeasement, the defendants feel, of America's vast middle-class, a slashing back through the law at the people and issues that stripped serenity from many lives. The law being used has all the classic subtlety of a firing squad. The government is charging the Chicago 8 with conspiring. It does not have to prove that the defendants committed any other crime or, indeed, that any other crime occurred. It does not have to prove that the actions of the "conspiracy" were clandestine; it can—if it chooses—use the public statements of the defendants. In fact it won't even bother to prove that all of the Chicago 8 even knew each other before the convention; the opening statement of the government to the jury implicitly conceded that they didn't. It seems as if all the prosecution has to do to convict the defendants is prove that they crossed state lines and discussed the organization of disorder with somebody somewhere somehow for some reason. The penalty is up to 10 years in jail and a $20,000 fine.

If the law is without precedent and the government's case seems tenuous, at least it has a hard man running it: Judge Julius Hoffman. He is a small man (5' 4½") with the look of a benevolent lake Arvey and the squeezed accents of Barry Fitzgerald. At 74, he is a tough old tory of arbitrary and righteous manner.

Some lawyers in Chicago privately call him "Julius the Just," though the defendants prefer to call him Mr. Magoo. He is known to be a helpless admirer of only two things: his own mind and prose, both of which seem to him to have a grace and felicity not entirely of this world. "I am not," he admits, "altogether a modest fellow." He is a man of considerable self-discipline (his weight has not varied from 135 pounds in the 16 years he's been on the bench) and triumphant self-assurance. He has certain liberal credentials (he was the judge who handed down the decision on the first school desegregation case in the North). He also has, as do some of the defendants, certain credentials as an actor; his greatest success lies in the tireless, eloquent and extraordinarily diverse performance of the character called Julius J. Hoffman. He displayed it endlessly at the beginning of the trial when he indulged a gift for public outrage that astounded and baffled the defendants, who thought they had pretty much established a corner on that market. Through the first week of the trial, Judge Hoffman casually sent lawyers to jail without bond, gallantly admitted hearsay evidence from government witnesses, and remorselessly quashed almost every trial motion offered by the defense. "You finally won one," he said—on granting a defense motion for a four-minute-early recess for lunch. Other than that, he pretty much confined himself to treating the defense to a running litany of insult:

"You did not open your mouth, sir! You have a strange way of making sounds."

"I caution you, young sir, that your remarks are contumacious."

"You have no standing here, sir. Is your hearing good? You have no standing here."

"Sir, I do not allow lawyers to come to here by the hundreds."

At the same time, it cannot be said that the defense was trying to curry his good favor. "It is clear that there is a circus in the courtroom and that Judge Hoffman is the ringleader," said Rennie Davis, one of the defendants, before TV cameras. "This court has consistently and systematically harassed, humiliated, maligned and degraded all of our attorneys both in and out of the presence of the prospective and actual jurors," said Defense Attorney William M. Kunstler while seeking a mistrial.

The court and the defense are not just bickering publicly; their every concept of the case and trial is antagonistic. The court is trying the defendants; the defense openly prefers to try the Chicago police, Mayor Daley and, in passing, Judge Hoffman himself. The court insists on confining the trial to the courtroom. The defendants would prefer to get it out into the streets where television and news cameras are not barred and where they can have a public platform for their policies.

Another characteristic of this wrong test of the wrong law in the wrong place at the wrong time is the inner tension of the defense. These eight men are not—whatever the government may allege—a monolithic whole. In philosophy they range from pacifist to Panther. In demeanor, they range from Black Panther leader Bobby Seale, a loner in court, to Abbie Hoffman and Jerry Rubin, the hippie-Yippie leaders of the "youth culture" who giggle and confer endlessly in court and pass notes back and forth like naughty schoolchildren, while between them defendant Lee Weiner calmly reads *The Wisdom of Lao-tzu*. "We got married today, Jerry and I," Abbie told me during one noontime recess. "He took my ring

The lone Chicagoan on trial is Lee Weiner, 30, who helped train demonstrators in "self-defense" tactics.

Pacifist David Dellinger, at 53 the oldest defendant, says he is "a disenchanted mainstream American."

Black Panther Bobby Seale, 32, already held for conspiracy to murder, called the judge a "blatant racist."

Yippie Jerry Rubin, 30, is serving a 45-day jail sentence during the trial for his part in a California sit-in.

Chemistry Professor John Froines, 30, is charged with teaching protesters to make an "incendiary device."

Antiwar mobilizer Rennie Davis, 29, charges the trial is part of President Nixon's "strategy of repression."

—an early break for lunch

and we had a little ceremony right there in court." He interpreted my speechlessness as reproof. "Oh, it's all right. My wife Anita and I never got legally married. We just got married in Central Park. So it's not as if Jerry and I did anything wrong."

Their mutual need for acquittal, combined with the court and the court's congestion, tends to disguise their individual instincts. Abbie Hoffman at one point urged his fellow defendants to join him in leaping to his feet and yelling "——the judge" when Judge Hoffman entered the courtroom, but the others declined. They do not share Abbie's passion for breaking into jail, and certain of them—like David Dellinger, Davis and Tom Hayden—cannot afford to be carted away to jail, without bond, on contempt-of-court charges. For they are busy organizing other demonstrations, and the trial is already intruding on the time and energy they can devote to this vocation. Indeed, Rennie Davis suggests that the government is using the trial—which, with the appeals that are virtually certain, figures to stretch on for months and months—as a conspiracy against *them*. "We have to spend our full time at night on the movement," he told me, "because we spend full time during the day in trial. But then—that may be the point of the whole thing."

New Left spokesman Tom Hayden, 29, who helped found the S.D.S., saluted the jury with a clenched fist.

In Lincoln Park, where the 1968 troubles began, a girl perches on a statue of Abe to light a candle of protest.